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FE Sent For:

#### Kite, Robin

From:

Tradewell, Becky

Sent:

Thursday, January 31, 2013 4:55 PM

To: Cc: Kite, Robin Konopacki, Larry

Subject:

FW: SB1-limits on applicability of navigable waters measures

Robin,

Can you do this one?

**Becky** 

From: Konopacki, Larry

Sent: Thursday, January 31, 2013 4:51 PM

**To:** Tradewell, Becky **Cc:** Henning, Anna

Subject: SB1-limits on applicability of navigable waters measures

Becky, please draft an amendment that does the following:

Create s. 295.605 (4) (bg) – "The department may not consider measures under par. (b) in its evaluation of a navigable waters activity in a navigable public water under par. (a) if the navigable public water is one of the following:

- 1. A perennial stream with a drainage area greater than 2 square miles at the location of the navigable water activity (define perennial stream to mean a stream that has continuous flow every day of the year in a year of average precipitation), or
- 2. A water other than a stream that is greater than 2 acres in size every day of the year in a year of average precipitation and that is not a freeze-out pond as defined in s. 29.001 (29).
- 3. A class 1, 2, or 3 trout stream.

Thanks, Larry

Larry A. Konopacki Wisconsin Legislative Council (608) 267-0683 larry.konopacki@legis.wisconsin.gov



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# State of Misconsin 2013 - 2014 LEGISLATURE



WY

# PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION SENATE AMENDMENT,

TO SENATE BILL 1



At the locations indicated, amend the bill as follows:

1. Page 156, line 19: after that line insert:

"(bg) Measures excluded from consideration. In determining if a navigable water activity meets the requirements under par. (a) with regard to a navigable water, the department may not consider any proposed measure under par. (b) if the navigable water is any of the following:

1. A perennial stream, if the drainage area of the portion of the stream upstream from the farthest downstream point of the navigable water activity is more than 2 square miles. In this subdivision, "perennial stream" means a stream that has a continuous flow every day of every year in which there is average precipitation.

1 2. A navigable water, other than a stream, that is more than 2 acres in area 2 every day of every year in which there is average precipitation and that is not a freeze-out pond as defined in s. 29.001 (29). 3 J. C. A class I, class II, or class III trout stream.". 4 5

(END)

# DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRBa0077/?dn RNK:..(:...



The language provided for this amendment uses the phrase "navigable public water". Because Senate Bill 1, and current law generally, uses only the phrase "navigable water" I did not use the phrase "navigable public water" in this amendment. If you wish to use that term, I think that the amendment must include a definition or some other language so that it is clear how a "navigable public water" differs from a "navigable water."

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Because a navigable water activity that occurs in a stream could possibly occur for a considerable portion of the length of the stream I have assumed that the language provided related to the drainage area of a stream refers to the area that is upstream from the farthest downstream point at which the navigable water activity will occur. Accordingly, I have drafted this provision based on that assumption.

Please contact me if you would like to discuss these issues or have any other questions about this amendment.

Robin N. Kite Senior Legislative Attorney Phone: (608) 266–7291

E-mail: robin.kite@legis.wisconsin.gov

# DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRBa0077/P1dn RNK:wlj:jm

February 1, 2013

The language provided for this amendment uses the phrase "navigable public water." Because Senate Bill 1, and current law generally, uses only the phrase "navigable water" I did not use the phrase "navigable public water" in this amendment. If you wish to use that term, I think the amendment must include a definition or some other language to clarify how a "navigable public water" differs from a "navigable water."

Because a navigable water activity that occurs in a stream could occur for a considerable portion of the length of the stream I have assumed that the language provided related to the drainage area of a stream refers to the area that is upstream from the farthest downstream point at which the navigable water activity will occur. Accordingly, I have drafted this provision based on that assumption.

Please contact me if you would like to discuss these issues or have any other questions about this amendment.

Robin N. Kite Senior Legislative Attorney Phone: (608) 266–7291

E-mail: robin.kite@legis.wisconsin.gov



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## State of Misconsin 2013 - 2014 LEGISLATURE



# PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

# SENATE AMENDMENT, TO SENATE BILL 1

At the locations indicated, amend the bill as follows:

1. Page 156, line 19: after that line insert:

"(bg) Measures excluded from consideration. In determining if a navigable water activity meets the requirements under par. (a) with regard to a navigable water, the department may not consider any proposed measure under par. (b) if the navigable water is any of the following:

1. A perennial stream, if the drainage area of the portion of the stream upstream from the farthest downstream point of the navigable water activity is more than 2 square miles. In this subdivision, "perennial stream" means a stream that has a continuous flow every day of every year in which there is average precipitation.

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2. A navigable water, other than a stream, that is more than 2 acres in area
every day of every year in which there is average precipitation and that is not a
freeze-out pond, as defined in s. 29.001 (29).

3. A class I, class II, or class III trout stream.".

5 (END)